

Temporary Asylum Accommodation and Delay



Alex Shattock

Asylum accommodation in the news....



Djokovic stay highlights refugee concerns at Melbourne detention hotel

By Alice Cuddy
BBC News

7 January



Asylum accommodation in the news....

Home Office hotels for asylum seekers 'akin to detention centres' - report

Lawyers documented deterioration in health of asylum seekers while staying in accommodation



The Crowne Plaza Hotel near Heathrow is being used to house asylum seekers. Last week a distressed man threatened to jump from the roof. Photograph: Chris J Ratcliffe/Getty Images

Asylum seeker, 24, found dead at hotel near Heathrow

Comment



Faye Brown

Monday 19 Jul 2021 1:43 pm



1.3k
SHARES



The Crowne Plaza hotel near Heathrow Airport is being used to house asylum seekers (Picture: Getty)

This talk

- Legal framework for Home Office provided accommodation
- How to bring a challenge
- Grounds of challenge
- Top tips for claimants: evidence, interim relief and settling

Legal framework

- Immigration and Asylum Act 1999, Section 95/98: asylum seekers

Section 95- Persons for whom support may be provided.

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or

(b) dependants of asylum-seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, a person is destitute if—

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

(4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.

Legal framework

- Immigration and Asylum Act 1999, Section 95/98: asylum seekers

Section 98- Temporary support

(1) The Secretary of State may provide, or arrange for the provision of, support for—

- (a) asylum-seekers, or
- (b) dependants of asylum-seekers,

who it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.

Legal framework

- Immigration and Asylum Act 1999, Section 4: failed asylum seekers

Section 4- Accommodation

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

- (a) he was (but is no longer) an asylum-seeker, and
- (b) his claim for asylum was rejected.

Types of challenge

- Rejection of s.95/98/4 claim
- Challenge to amount of provision
- System challenges
- Challenge to delay in providing accommodation
 - Particular difficulties recently due to Covid
 - Particular difficulties due to outsourcing

Grounds of challenge

- Unreasonable delay
- Failure to meet statutory duty
- Section 55 of the Borders, Citizenship and Immigration Act 2009 (duty to have regard to the best interests of children)
- Disability or other Equality Act discrimination
- HRA Article 8 and possibly 3
- Other grounds possible- *Padfield* etc

Top tips for claimants

- Evidence
 - More detailed the better
 - Ideally from medical professionals e.g. GP; can get other professionals like dieticians, occupational therapists etc
 - Should link the problems to the accommodation situation specifically
 - Put it to the Home Office before issuing!

Top tips for claimants

- Interim relief
 - Usual to always ask for this- N463 within 7 days or (now) N244 if 7 days or more
 - Think carefully about how soon you can reasonably justify in terms of judicial consideration: depends on the facts. Worse facts/more urgency= earlier consideration. If the facts are not on your side re: urgency, be realistic

Top tips for claimants

- Interim relief

- The test for IR is modified *American Cyanamid*: (1) triable issue (2) balance of convenience with the addition of public interest
- SSHD often says- you are asking for a mandatory injunction so need to show “strong prima facie case” i.e. higher hurdle. This is wrong: see Admin Court Guide and *AS v Liverpool CC* [2020] EWHC 3531 (Admin). At best mandatory nature of order goes to balance of convenience
- Status quo: *K v SSHD* [2020] EWHC 3639 (Admin):

“The Secretary of State puts forward that the status quo is leaving the family where they are. In my judgment, that would not be maintaining the status quo . The status quo must be for the Secretary of State to comply with her duties.”

Top tips for claimants

- Settlement/next steps
 - If you get interim relief: usual to settle with your costs paid- you essentially got what you asked for. Hard to argue case has not become academic, unless systemic challenge or other aspect to the claim.
 - Don't settle before confirming client is happy with the dispersal accommodation- it might be worse than the temporary accommodation!
 - If you pleaded damages this part of the claim can survive and be transferred to the CC

Thank you for listening

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